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Dear Mark

Review of industry code governance

The Association (AEP) represents large, medium and small companies accounting for more than 90 per cent of the UK generating capacity, together with a number of businesses that provide equipment and services to the generating industry. Between them, the members embrace all the generating technologies used commercially in the UK, from coal, gas and nuclear power, to a wide range of renewable energies.

We read with interest your letter of 28th November 2007. Had we been at the development stage for all the relevant codes we would probably start with a few core requirements which would then be enhanced to apply across each individual code. However this is not the case and we therefore must accept that the cost of radical change to align any of the codes would be prohibitive compared with any perceived benefit. We believe there are areas that should be explored for potential enhancement and expand our views throughout this response which for ease of reading we have structured under the same headings you used throughout your letter of 28th November 2007.

Is it time to look again at the effectiveness of code governance?

In this opening section you outline statutory change affecting the Gas and Electricity Markets Authority (GEMA) delivered via the Sustainable Energy Act 2003 and the Energy Act 2004, specifically referring to the requirement to carry out Impact Assessments, decisions being subject to provisions within the appeals process and requirements to deliver Better Regulation. This leads to the requirement for GEMA to deliver decisions 'based on credible evidence that has been appropriately tested and to ensure that our reasoning underlying these decisions is transparent and consistent. The Association supports your aspirations. We are involved on a daily basis in an industry that promotes and upholds the need for transparency, and to see this delivered within the Ofgem and Authority arena would be most welcome. Through delivery of a more open and transparent regime GEMA will ensure **all** participants, be they large or small, have a much improved understanding of the regulatory burdens the industry faces.

Critical analysis of modification proposals

One major concern you raise is the ‘quality and depth of analysis provided in code modification reports and the extent to which arguments in support of code modifications are well substantiated’. In support of this concern you refer to your recent experience with Modification Groups, the standard and content of Industry Reports and your experience with the Competition Commission. The Association believes that this perceived defect can be improved by simply ensuring improved engagement from the Ofgem representatives attending the meetings.

Ofgem has an opportunity to attend Panels and Committees involved within the governance process for all relevant codes, indeed this extends through to working groups, modification groups and issue groups. Attendance brings with it the opportunity to engage in the process too. We understand that the discretion of GEMA cannot be fettered in any way however requests for additional information or analysis could be made via Ofgem at any time throughout the process that would assist GEMA in delivery of its statutory obligations.

Throughout its representation at Modification Group and Workstream meetings, Ofgem is in receipt of all relevant documentation throughout the whole lifetime of the change procedure. This gives Ofgem the opportunity to ensure all relevant information and supporting evidence has been requested, gathered and adequately tested. In addition Ofgem can analyse the consultation responses along with all members of the Modification Group and is able to request clarification on any aspect of Participant responses. The Code Administrators could do this prior to finalisation of any report thus ensuring the quality and robustness of all documentation to be presented to the relevant code Panel and subsequently Ofgem and GEMA.

Perhaps one output from this Code Governance Review could be to establish a cross industry group to develop a ‘Terms of Engagement’ guideline clearly defining trigger points where Ofgem should be taking the opportunity to ensure all their requirements have been fulfilled.

The relevance of code objectives – are they still fit for purpose?

Whilst we recognise the need for some consistency on Ofgem’s wider code objectives and their relationship to code decisions, in practice the relevant wider considerations that flow from Ofgem’s secondary duties are in relation to security of supply, the environment and social issues. We believe that this needs to be reflected in panel decision making, in doing so however the interpretation of such objectives would need to be clearly understood by all. This then ensures consistent interpretation and application across all codes and offers the relevant Panels the opportunity not to progress proposals that are inconsistent with the agreed objectives. In developing such objectives however it may not be appropriate to include them within all codes, particularly those of a more technical nature such as the Grid Code for example.

Charging Methodologies

Association members have expressed a wide range of views with regard to the potential inclusion of charging methodologies within an organised industry change management process delivered via existing industry codes. Noting that once the charging methodology is proposed and approved subsequent code modification may be required, a move to enable market participants to be more involved in their governance would enhance transparency and therefore understanding of how National Grid's models work. We would support further investigations around this proposal.

Other Issues

We have recently seen development and implementation of the Distribution and Connection Use of System Code which features an element of self-governance for signatories. Members would like the opportunity to explore the possibility of adoption of this feature for some of the more mature codes combined with an assessment of the impact of implementation of such a model under the representative and independent panel models we work with today. Such an assessment would need to take particular account of the impact upon smaller players who may have difficulty in fully participating in the process.

It would be timely to explore the opportunity to facilitate adoption of some of the most efficient code features across the range of industry codes. For example, the UNC enables variation to or withdrawal of modifications. This feature does not exist within the BSC but may be appropriate to adopt in future. The CUSC allows multiple alternate modifications to be proposed whilst the BSC limits alternatives to one. Analysis of the benefits of these alternate approaches and others would be beneficial.

Governance Review

We would support Ofgem's aspirations in development of a project which would culminate in delivery of an inclusive, transparent, rigorous and cost effective governance regime where areas of current governance can be proven to be deficient. We would hope that in the process Ofgem and GEMA lead by example and seek to find ways of enhancing their performance in pursuit of these objectives.

Members are supportive of independent code administration however would wish to explore fully the cost benefit of moving towards such a regime, including the potential to merge codes, in order to understand fully the costs involved.

Way Forward

We look forward to hearing your views on this matter in more detail during your 'Powering the Energy Debate' to be held 28th February 2008. If in the meantime you wish to discuss any aspect of this submission please feel free to contact me.

Yours sincerely,



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